

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

DERAY SMITH,

Petitioner,

vs.

LLOYD RAPELJE,

Defendant.

Civil Action No. 09-CV-14876

HON. BERNARD A. FRIEDMAN

**OPINION AND ORDER DENYING PLAINTIFF'S  
APPLICATION TO PROCEED IN FORMA PAUPERIS**

This matter is before the Court on the Court's review of petitioner Deray Smith's notice of appeal and application to proceed *in forma pauperis* [docket entries 81 and 83]. Smith appeals the Court's February 17, 2017, order denying his motions to compel and for reconsideration.

The Court declines to grant a certificate of appealability because Smith has failed to make a substantial showing of the denial of a federal constitutional right.<sup>1</sup>

28 U.S.C. § 1915(a)(3) controls Smith's application, stating that an "appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." The Supreme Court has defined an appeal taken in good faith as any non-frivolous appeal.<sup>2</sup> The Court denies Smith's application because his appeal is frivolous. No reasonable jurist could disagree with the Court's February 2017 order.

Accordingly,

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<sup>1</sup> See *Dell v. Straub*, 194 F. Supp. 2d 629, 659 (E.D. Mich. 2002).

<sup>2</sup> *Coppedge v. United States*, 369 U.S. 438, 445 (1962).

IT IS ORDERED that no certificate of appealability shall issue.

IT IS FURTHER ORDERED that Smith's application to proceed *in forma pauperis* is denied.

   s/ Bernard A. Friedman\_\_\_\_\_

BERNARD A. FRIEDMAN

SENIOR UNITED STATES DISTRICT JUDGE

Dated: June 14, 2017  
Detroit, Michigan